

IN THE UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF IOWA
EASTERN DIVISION

John Doe I, John Doe II)
and John Doe III, on their own)
behalf and as representatives of the class)
of all sex offenders in the State of Iowa,)

Plaintiffs,)

vs.)

Tom Miller, Iowa Attorney General,)
and J. Patrick White, Johnson County)
Attorney and Michael Wolf, Clinton)
County Attorney, as representatives)
of the class of all county attorneys)
in Iowa,)

Defendants.)

No. _____

COMPLAINT

INTRODUCTORY STATEMENT

The action is brought under the Federal Civil Rights statute, 42 U.S.C. § 1983, to enjoin enforcement of the Iowa law which prohibits sex offenders from residing within 2000 feet of either a school or daycare center. This statute, Senate File 2197 ("SF 2197") was passed by the Iowa legislature in the Spring of 2002 and went into effect on July 1st, 2002. It has since been codified as Iowa Code Section 692A.2A. The Plaintiffs are sex offenders living in Johnson County and Scott County who complain that the statute violates their rights established by the United States Constitution in a number of ways.

The statute first and foremost imposes "punishment". It is punishment because there is virtually no place in towns or urban areas in Iowa that is not within 2000 feet of a school or daycare center. If a member of the class was already living someplace on July 1, 2002 that person

maybe can remain there. If the person has to find a new place to live after that date that is next to impossible.

As punishment SF 2197 violates the *ex post facto* clause of the United States Constitution to apply it to class members who committed their crimes before July 1st, 2002.

As punishment SF 2197 violates the prohibition on cruel and unusual punishment found in the Eighth Amendment. The statute essentially imposes banishment on individuals. Such punishment is no longer tolerated.

Because it is punishment the statute denies the class Due Process of Law to the extent that it imposes punishment without an individualized showing of dangerousness or an individual opportunity to obtain an exception to the law.

The statute violates the Fifth Amendment right to avoid self incrimination. Class members are required to register their addresses with the local sheriff . If they are living in an unacceptable residence they are required to disclose that violation.

The statute violates the right to travel guaranteed by the Constitution, both for individuals in Iowa who wish to live elsewhere in Iowa and also individuals who are outside of Iowa and wish to live here.

The statute violates the right of family privacy guaranteed by the Constitution to the extent that it prevents class members from being able to live with their families.

The statute violates the right to Due Process because it does not provide fair notice of where people can live. It is difficult to determine where there are day care centers. It is difficult to determine exactly whether a particular residence is within 2000 feet of a school or daycare center.

The plaintiffs seek both a preliminary and a permanent injunction to bar enforcement of the statute.

JURISDICTION AND VENUE

- A. The action is brought under 42 U.S.C. 1983. This Court has jurisdiction over this action pursuant to 28 U.S.C. 1331 and 1343. The Court has authority under 28 U.S.C. 2201 to provide appropriate declaratory relief as to matters within its jurisdiction.
- B. Venue is proper in the Southern District pursuant to 28 U.S.C. § 1391(b) because some of the representative Plaintiffs and Defendants are located in the Southern District of Iowa .

PARTIES

- C. John Doe I, John Doe II, and John Doe III are individuals who are subject to the residency restrictions and penal provisions of SF 2197. John Doe I and John Doe II reside in Johnson County. John Doe III resides in Scott County. John Doe III wishes to reside in Clinton County. Their actual names are withheld to protect their privacy.
- D. Plaintiffs bring this action on their own behalf and on behalf of all other persons subject to the residency restriction.
- E. Tom Miller is the Attorney General of the state of Iowa. He is charged by law with enforcement of the Iowa Code, supervision of all county attorneys and defense of the constitutionality of the laws of Iowa. He is sued in his official capacity.

- F. J. Patrick White is the County Attorney for Johnson County. Michael Wolf is the County Attorney for Clinton County. They are charged by law with the enforcement of the residency restriction in their respective counties. They are sued in their official capacity.
- G. J. Patrick White and Michael Wolf are sued pursuant to Federal Rule of Civil Procedure 23b(1) as the representatives of the class of all county attorneys in Iowa.

THE STATUTE

- H. SF 2197 was passed by the Iowa Legislature and signed by the Governor in the Spring of 2002. It became effective on July 1, 2002. Violation of the statute is an aggravated misdemeanor. As aggravated misdemeanor can carry up to a two year prison sentence. As amended Section 692A.2A now provides as follows:

“A person shall not reside within two thousand feet of the real property comprising a public or non public elementary or secondary school, or a child care facility.”

- I. “Persons” subject to this residency restriction include individuals who have committed a “criminal offense against a minor, or an aggravated offense, sexually violent offense or other relevant offense that involves a minor”. It appears that the statute applies to all individuals who have committed a crime of some kind of sexual nature and have to register in Iowa as sex offenders under Chapter 692A.
- J. The statute applies regardless of whether the particular offense involved children or minors.

- K. The statute applies regardless of whether the person has been deemed by the State of Iowa to be likely to re-offend or to pose any particular danger to minors.
- L. Among the offenses resulting in lifelong banishment under SF 2197 are sexual exploitation of an adult client by a therapist; an act of indecent exposure not involving a child; and underage sexual relations between teenagers in violation of Iowa Code Section 709.4;
- M. The statute's residency restriction is not limited in duration. The statute appears to impose a lifetime ban on residency close to a school or daycare center. This effectively imposes a lifetime banishment.
- N. The statute contains a limited "grandfather" clause. Individuals are permitted to remain in the residence they were occupying prior to the effective date of the law on July 1, 2002. This provision, however, does not have any effect after July 1, 2002. For that reason, a person who is sentenced after July 1, 2002 may be unable to remain in a residence he had occupied prior to his sentencing.

Furthermore the statute will prevent many persons who are sentenced or released from custody after July 1, 2002 from returning to a previously established residence or from reuniting with family members

CLASS ALLEGATIONS

- O. This action is brought as a class action under Federal Rule of Civil Procedure 23(a) and 23(b) on behalf of “all people who are subject to the residency restriction established in Senate File 2197”. Because of abstention concerns, the class should exclude anyone who is currently being prosecuted in any county for a violation of the statute.
- P. There are thousands of registered sex offenders in the State of Iowa. The Plaintiff class here would be slightly larger as it would include persons not currently registered in Iowa who would want to move to Iowa if they were able to find a place to live.
- Q. The Plaintiff class is so numerous that joinder of all members is impractical.
- R. The claims of the named Plaintiffs are typical of the class. There are common issues of fact and law including the constitutionality of the statute.
- S. There are 100 counties in Iowa. It would be impractical to join all 100 County Attorneys. Mr White and Mr. Wolf should be able to represent the Defendant Class of all County Attorneys in Iowa.

FACTUAL ALLEGATIONS

John Doe I

- T. Plaintiff John Doe I is a registered sex offender who lives in Iowa City which is located in Johnson County. He is required to register as a sex offender because of a 1994 offense in the State of Wisconsin. At the time he was 18 years old. He had

consensual sex with his girlfriend who was 15 years old. Under Wisconsin law that constitutes a felony. He pled guilty and received the Wisconsin equivalence of a “deferred judgment”. He successfully completed probation.

- U. The behavior of John Doe I would not have been a crime at all in the State of Iowa.
- V. Despite that fact he is required to register in Iowa. He is therefore subject to the residency restriction in SF 2197.
- W. John Doe I is not regarded as either a high or even moderate risk to reoffend.
- X. He is currently living in a house that is within 2000 feet of a school or day care center. He can live there as the sheriff considers him to qualify under the “grandfather” provision of SF 2197. He is scheduled to move to a different unit in the same house later this summer. It appears that he will have to reregister the new address. As such he may not be able to utilize the grandfather provision currently available.
- Y. If he has to move to another place in Iowa City it would be difficult to find any place to live. There are a large number of school and day care centers in Iowa City, like most Iowa cities and towns. There are very few places where sex offenders can live.

John Doe II

- Z. Plaintiff John Doe II is a resident of Johnson County. He is a sex offender having pled guilty to the crime of Sexual Abuse in the Third Degree in the fall of 2002. He pled guilty to having consensual sex with a person, age 15, when he was 20 years

old. The crime took place in July 2001, prior to SF 2197 being enacted.

- AA. He received a suspended sentence and is currently on probation.
- BB. After he pled guilty but before he was sentenced he found one of the few places to live in Iowa City that is not within 2000 feet of school or daycare center.
- CC. He had looked for a place to live that would be acceptable under the law for months without success. During that time he was residing at the Hope House in Iowa City, a half way house. He was at the half way house because he was on probation for another offense. He could have left the half way house several months earlier had it not been for Senate File 2197. His probation officer would not allow him to move out to a place that would be illegal residence once he was convicted of the sexual offense.
- DD. John Doe II recently was evicted from his apartment. He has tried repeatedly to find a place that qualifies under SF 2197. He has a job so can afford some housing in Iowa City. If he cannot find an acceptable residence in the near future he will have go to jail or back to the half way house.

John Doe III

- EE. John Doe III is a resident of Scott County. He is a sex offender having been convicted of Third Degree Sexual Abuse in September of 1995. He has completed his ten year prison sentence.
- FF. He is living at an address in Scott County where he was living prior to July 1, 2002.
- GG. He is currently engaged to be married to a person who lives in Clinton County.

- HH. His fiancée owns a home that is within 2000 feet of a daycare center or school.
- II. Under current law, John Doe III would not legally be able to move in with his fiancée.
- JJ. John Doe III wishes to be able to move in with his fiancée in her home in Clinton County. He is prohibited from doing that by Senate File 2197.

LEGAL ASSERTIONS

- KK. The residency restrictions imposed by SF 2197 constitute a criminal punishment cognizable as such under the 5th, 8th, and 14th Amendments to the Constitution.
- LL. The 2000 foot restriction imposes the punishment of banishment.
- MM. SF is an assertion of official governmental power or authority under color of law within the meaning of 42 U.S.C. 1983.
- NN. As a result of the enactment and the enforcement of SF 2197 the Plaintiff class is subjected to deprivation of rights and privileges secured by the Constitution of the United States as more particularly set forth below.

CAUSES OF ACTION

UNCONSTITUTIONAL PUNISHMENT

- OO. SF 2197 in fact imposes punishment. The punishment is the functional equivalent in many cases to the old sanction of banishment that has not been permitted for decades. Application to individuals such as the named Plaintiffs and most of the Plaintiff class, who committed their crimes before July 1, 2002, is a violation of the *ex post facto clause* of the United States Constitution.

PP. Senate File 2197 is in violation of the Eighth Amendment of the United States Constitution. It essentially amounts to a form of banishment, excluding certain sex offenders in some cases from living in entire towns. Banishment as a punishment is a violation of the prohibition of Cruel and Unusual Punishment found in the Eighth Amendment.

DUE PROCESS

QQ. SF 2197 applies to the entire Plaintiff class. There are no exceptions. There is not opportunity for a hearing. The statute denies the class Due Process of law to the extent that it imposes punishment without an individualized showing of dangerousness or an individual opportunity to obtain an exception to the law.

RR. SF 2197 denies the class Due Process because it does not provide fair notice of where people can live. It is difficult to determine where there are day care centers. It is difficult to determine exactly whether a particular residence is within 2000 feet of a school or daycare center.

FIFTH AMENDMENT

SS. SF 2197 violates the Fifth Amendment right to avoid self incrimination. Class members are required to register their addresses with the local sheriff. Failure to register a current address is a criminal offense. If a class member is living in an unacceptable residence the person is still required to disclose that violation. This compels the person to incriminate himself.

RIGHT TO TRAVEL

- TT. Senate File 2197 improperly burdens the fundamental right to travel.
- UU. Members of the Plaintiff class who wish to return to Iowa or to migrate to Iowa cannot do so because of there are so few residences available.
- VV. Members of the Class who have a residence permitted under the grandfather clause cannot establish a new residence because of the fact there are so few places to live.
- WW. There is no compelling state interest in prohibiting all sex offenders from living near schools. In fact sex offenders are now permitted to work at schools but are not permitted to live within 2000 feet of their jobs. The statute is not sufficiently tailored to justify the restriction on this fundamental right.

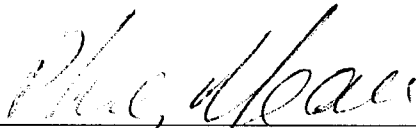
RIGHT TO FAMILY PRIVACY

- XX. Senate File 2197 interferes with the fundamental right of family privacy guaranteed by the United States Constitution.
- YY. Individuals have a Constitutional right to associate with family members such as parents, children, brothers, sisters, spouses and partners. This right extends to living with those persons.
- ZZ. While the state can curtail this right, that can happen only if there is a compelling reason and the means chosen are narrowly tailored. This statute is not sufficiently tailored to be able to satisfy its infringement on this fundamental right.

WHEREFORE Plaintiff class requests the following relief.

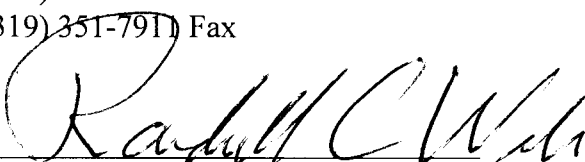
1. An preliminary and permanent injunction prohibiting enforcement of SF 2197;
2. A declaratory judgment that SF 2197 is unconstitutional;
3. An award of attorney fees and costs pursuant to 42 U.S.C. § 1988;
4. Such other relief as may be appropriate.

RESPECTFULLY SUBMITTED,



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